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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 736

GWENDOLYN TUCKER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR REHEARING.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Gwendolyn Tucker, prays that this Court grant a rehearing of its order of April 18, 1960, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois in the above entitled case as prayed in the petition filed on February 26, 1960, herein.

The Constitution of the State of Illinois provides:

> "• • • Appellate Courts • • • may be created • • • from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases • • •."

The statute relating to opinions of the Supreme Court provides:

> "In the decision of cases submitted to the Supreme Court, the opinions of the justices shall be delivered in writing, and filed with the other papers. Such opinions shall also be spread at large upon the records of the court."

Ill. Rev. Stat. 1959, Chap. 37, Sec. 21.

The question not previously presented is whether the State may, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, administer the constitution and statute so as to deny adequate appellate review to petitioner while granting it to others.

Petitioner was convicted by a jury in the County Court of Whiteside County of the offense of keeping and maintaining a house of ill fame. In accordance with the verdict, she was sentenced to pay a fine of $200.00 and to six months confinement in the county jail.

She sued out a writ of error from the Appellate Court to review the judgment of conviction and sentence. The judgment of the County Court of Whiteside County was affirmed.

The opinion was delivered by Mr. Justice Dan H. McNeal, of Moline, Illinois. He is a judge of the Circuit Court of the 14th Judicial Circuit consisting of Henry, Mercer, Rock Island and Whiteside Counties. He was assigned to the Appellate Court by the Supreme Court of Illinois for a three year term.

She then sued out a writ of error from the Supreme Court of Illinois to review the judgment of the Appellate Court. It was affirmed.

The opinion was delivered by Mr. Justice Ray I. Klingbiel, of East Moline, Illinois. He was elected by the Fourth Supreme Judicial District. He has been a judge of the Circuit Court of the 14th Judicial Circuit and had sat in Whiteside County.

The statute is mandatory. It is not satisfied by the adoption of the opinion of the Appellate Court as the opinion of the Supreme Court of Illinois, but it is necessary that the Supreme Court of Illinois shall deliver its own opinion.

The Supreme Court of Illinois should not have been content to follow its action in *People* v. *Williams*, 8 Ill. 2d 140, and *People* v. *Lackaye*, 1 Ill. 2d 618, cited by it and simply adopt the opinion of the Appellate Court as its own opinion. In the first place, the Appellate Court has not correctly decided the case. The decision is not supported by the record. The Appellate Court has cited cases which are not in point and has not followed the cases cited by petitioner which are decisive of the case. The Supreme Court of Illinois should have prepared and delivered its own opinion as it did in *People* v. *Peters*, 10 Ill. 2d 577, reversing 10 Ill. App. 2d 567. It should have considered and discussed all the errors relied upon for reversal and reached its own conclusions. If this had been done, it would not have allowed the decision of the Appellate Court to stand. The judgment of the Appellate Court should have been reversed.

Petitioner has an absolute right to a fair and impartial as well as an adequate appellate review. It is submitted that the opinions of the Appellate Court and the Supreme Court of Illinois should have been prepared and delivered

by a judge from another judicial circuit or district. If this practice is adopted, the dignity and integrity of the courts will be better preserved and the rights of the accused protected.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that a rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Illinois.

Respectfully submitted,

JOHN R. SNIVELY,
Counsel for Petitioner.

Certificate of Counsel.

I hearby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of this Court.

/s/ John R. Snively,

Counsel for Petitioner.